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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL. S.J.

9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11 ASA FARMS, INC., a California corporation and
12 BRAGA RANCH,

13 Plaintiffs,

14 v.

15 FRESH 'N HEALTHY, INC., a Delaware
16 corporation, MARK WILLIAMS, an individual;
17 JACK PARSON, an individual; STEVEN
18 CINELLI, an individual; CHAD HAGEN, an
19 individual, SANTOS MARTINEZ, an individual;
20 DON BEAM, an individual; DARRYL
21 NICHOLSON, an individual; RICHARD MAY,
22 an individual; THOMAS COLOGNA, an
23 individual; PRESTWICK PARTNERS, LLC, a
24 California limited liability company; SOLSTICE
25 VENTURE PARTNERS, LLC, a business entity
26 form unknown; VFINANCE INVESTMENTS, a
27 business entity form unknown; FMP
28 VINEYARD, LLC, a New Mexico limited
liability company; BUTTONWOOD OPTION,
LLC, a business entity form unknown; DW, LLC,
a business entity form unknown; M SOLAZZO
TRUST 2002; P. SOLAZZO 1998; GIBBONS
FAMILY TRUST; BIXLER TRUST;
STEIGERWALD TRUST and CARTER TRUST,
and DOES 1 through 50, inclusive,

Defendants.

C 08 00122

ATTORNEY CERTIFICATION
WHY NOTICE SHOULD NOT BE
GIVEN
RULE 65(b)

1 The undersigned represents Plaintiffs in this action to enforce the trust provisions of
2 the Perishable Agricultural Commodities Act (PACA), 7 USC §499e(c).

3 Notice of this motion should not be required because notice will afford Defendant Fresh
4 'N Healthy, Inc. ("Fresh") an opportunity to dissipate trust assets that are required by statute to
5 be held for the benefit of the Plaintiffs, who are PACA trust creditors of Defendants.

6 Defendants are under a statutory duty to pay promptly for produce from the PACA trust.
7 Defendants have failed to pay. In addition:

8 1. Upon information and belief, Fresh has had its line of credit pulled by Comerica
9 Bank; and

10 2. Fresh is no longer operating.

11 All of the above evidence demonstrates that Defendant Fresh is experiencing serious
12 financial problems and that Defendants may have insufficient funds to pay Plaintiffs' claims in
13 full. Therefore, advising Defendant Fresh of the pendency of this motion will allow
14 Defendants to make payments of trust assets in their possession to non-trust debts. Once the
15 trust assets are dissipated, it is all but impossible to recover them. H.R. Rep. No. 543, 98th
16 Cong. 2d Sess. 3-4 (1983), reprinted in 1984 US Code & Admin. News 405, 411. See also *J.R.*
17 *Brooks & Son, Inc. v. Norman's Country Market, Inc.*, 98 B.R. 47 (Bkrcty. N.D. Fla. 1989).
18 Entry of an ex-parte temporary restraining order guarantees the performance of this statutory
19 duty and prevents **any** further dissipation pending further hearing, which can be set as soon as
20 possible.

21 Dated: January 7, 2008

22 LOMBARDO & GILLES, LLP

23 By: Kelly McCarthy Sutherland
24 Kelly McCarthy Sutherland
25 Attorneys for Plaintiffs
26 ASA Farms, Inc., and Braga Ranch
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